

Victoria A. Amelina, an individual; and)	Case No.: 3:14-cv-01906-WQH-NLS
A.A.; D. S and B.S., each individuals)	
and minors by and through their)	
Guardian Ad Litem, Victoria A.)	
Amelina,)	
)	STIPULATION FOR
)	PROTECTIVE ORDER AND
)	ENTRY OF PROTECTIVE
)	ORDER <u>AS MODIFIED BY THE</u>
Plaintiff,)	<u>COURT</u>
)	
vs.)	
)	(Dkt. No. 87)
)	
Manufacturers and Traders Trust)	
Company aka M&T Bank, Safeguard)	
Properties, LLC, and the Wolf Law)	
Firm, A Law Corporation.)	
)	
)	
Defendants.)	
)	
)	

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WHEREAS, Defendants Manufacturers and Trader Trust Company aka

1 “M&T Bank (“M&T”) and Safeguard Properties, LLC (“Safeguard”)
2 (collectively “Defendants”) in the above-entitled action (“Action”), and Plaintiffs
3 Victoria A. Amelina, an individual (“Amelina”); and A.A.; D. S and B.S., each
4 individuals and minors by and through their Guardian Ad Litem, Victoria A.
5 Amelina (collectively the “Plaintiffs”), both Defendants and Plaintiffs
6 collectively as “a Party” or “Parties”, possess documents and information that
7 may have a right to protection from disclosure or dissemination, which
8 documents and/or information have been or may be disclosed or requested in the
9 course of discovery herein;

10 WHEREAS, the Parties may issue disclosures, serve discovery, or conduct
11 depositions in the Action that may require responses containing or the production
12 of confidential, financial or private information, or proprietary or trade secret
13 information, or other information protected by applicable privacy laws
14 (“Confidential Information” or “Protected Material”, as further defined below);

15 IT IS HEREBY STIPULATED AND AGREED, by and between the
16 Parties hereto, as follows:

17 1. The Parties may designate as “Confidential Information” any and all
18 documents, testimony, or other evidence produced in this action that contain
19 confidential, financial, or private information, or proprietary or trade secret
20 information, or other information protected by applicable constitutional or
21 privacy laws or protections. Materials containing Confidential Information shall
22 be designated in good faith and by appropriately labeling such documents,
23 testimony, or other evidence “Confidential” without obstructing any mark or
24 writing which appears on the original. Documents, testimony, and other evidence
25 also may be collectively designated as “Confidential”. All Confidential
26 Information so marked shall be treated in accordance with this Protective Order
27 entered by the Court in this action. “Confidential Information” is the same as
28 “Protected Material”.

1 2. Confidential Information disclosed, produced, or testified to in
2 connection with this action may be used and retained solely for the purposes of
3 this action and this action only.

4 3. As used herein, the Confidential Information designated by the
5 Parties may include without limitation papers, tapes, documents, discovery
6 responses, disks, diskettes, copies, extracts, data bases and complete or partial
7 summaries prepared from such papers, documents, photographs, or other tangible
8 things produced by the Parties in connection with this action, as well as
9 deposition testimony, declarations, and written discovery responses.

10 4. All Protected Material disclosed or produced, and to be disclosed or
11 produced, in the course of discovery in this action is subject to the terms of this
12 Protective Order, and may only be used or disclosed as described herein, and for
13 the purposes of this action only, except as otherwise ordered by the Court.
14 Protected Material shall not be made public by the Parties or their counsel, or be
15 used for any purpose other than the litigation of this case, including for
16 discovery, law and motion proceedings, and preparation for and trial(s) or appeal
17 of this action. Any document or information which has been obtained through
18 independent means, in the course of private investigation, or by subpoena to any
19 government agency or other person, does not become Protected Information
20 merely by designation by one or both of the Parties in the course of discovery in
21 this lawsuit. Provided, however, that if a third party makes a request for
22 confidentiality, the parties may stipulate to extend the protection of this order to
23 documents or information produced by such third party, and such stipulation shall
24 be in writing.

25 5. With respect to oral testimony, a Party may designate all or part of
26 the testimony of any witness as Protected Material in the following manner:

- 27 a. During the deposition or hearing, a Party may orally designate all or
28 a portion of the testimony as Confidential Information. The reporter

1 shall make a notation in the record marking the beginning and ending
2 of all testimony so designated as “Confidential”.

3 b. Alternatively, within fifteen (15) days after the court reporter serves a
4 copy of the transcript of a deposition or hearing, a Party may identify
5 all or part of the transcribed testimony as Confidential Information
6 by giving written notice to counsel for deponent of the specific pages
7 and lines of the transcript that constitute or contain Confidential
8 Information. Until fifteen (15) days after the court reporter serves a
9 copy of the transcript of a deposition or hearing, all deposition
10 transcripts shall be deemed Confidential Information under the terms
11 of this Protective Order, and there shall be no disclosure of any
12 information contained therein in any discovery motions without
13 complying with the terms of this Protective Order, if a Party’s intent
14 to subsequently designate Confidential Information is stated at the
15 time of the deposition. Those portions of transcripts of depositions
16 thereafter designated as containing Confidential Information shall be
17 governed by the terms of this Protective Order.

18 6. Except as permitted in paragraph 14, counsel for the Parties shall
19 keep Confidential Information confidential, and shall in no way divulge any
20 Confidential Information, or any summary or abstract thereof, to any firm,
21 person, or corporation, save and except to the following (hereinafter “Qualified
22 Persons”):

- 23 a. Counsel for the respective parties and employees thereof whose
24 functions for the purposes of prosecuting this Action require access
25 to such Confidential Information;
- 26 b. Outside experts or consultants retained, sought to be retained, or
27 contacted by a party or counsel hereto whose advice and
28 consultation are being or may be used by such party in connection

1 with preparation for trial(s), appeal(s), or depositions or for trial(s)
2 or appeal(s), in this action, including any motions in this Action;

- 3 c. Any party and any officer, employee, administrators, insurers,
4 indemnitors, or beneficiaries of a party, to the extent deemed
5 necessary by counsel for that party, for the litigation, trial, and/or
6 appeal of this Action;
- 7 d. Testifying witnesses in this Action, but only in connection with
8 preparation for, or testimony at, deposition or trial or via declaration;
- 9 e. The court(s) and any person employed by it or them to work on this
10 Action;
- 11 f. Any court reporter or videographer employed by one of the Parties
12 to this Protective Order for the purpose of recording depositions;
- 13 g. Employees of document copying, storing, or handling services; and
- 14 h. Any person who authored or received the Confidential Information
15 prior to commencement of this action.

16 7. No Qualified Persons, other than those referred to in paragraphs
17 6(a), 6(c), 6(e), 6(f), and 6(g), shall have access to Confidential Information
18 without having first read this Protective Order and having acknowledged and
19 agreed in writing, by signing an "Acknowledgment and Agreement to Be Bound"
20 in the form attached hereto as Exhibit A, to be bound by this Protective Order.

21 8. If a Party or its or his or her counsel is served with a subpoena or an
22 order issued in other litigation that would compel disclosure of any Protected
23 Material the Parties must so notify each other, in writing (by electronic mail, if
24 possible) immediately and in no event more than three court days after receiving
25 the subpoena or order. Such notification must include a copy of the subpoena or
26 court order. The Party also must immediately inform in writing the party who
27 caused the subpoena or order to issue in the other litigation that some or all the
28 material covered by the subpoena or order is the subject of this Protective Order.

1 In addition, the Party must deliver a copy of this Protective Order promptly to the
2 party in the other action that caused the subpoena or order to issue. The purpose
3 of imposing these duties is to alert the interested parties to the existence of this
4 Protective Order and to afford the Parties an opportunity to try to protect her
5 confidentiality interests in the court from which the subpoena or order issued.
6 The Party seeking to protect any material shall bear the burdens and the expenses
7 of seeking a protective order from the Court and nothing in these provisions
8 should be construed as authorizing or encouraging any party in this action to
9 disobey a lawful directive from another court.

10 9. If a Party or her/his/its counsel learns that, by inadvertence or
11 otherwise, they have disclosed Protected Material to any person or in any
12 circumstance not authorized under this Protective Order, the Parties must
13 immediately: (a) notify the other Party in writing of the unauthorized
14 disclosures; (b) use their best efforts to retrieve all copies of the Protected
15 Material; (c) inform the person or persons to whom unauthorized disclosures
16 were made of all the terms of this Order; and (d) request such person or persons
17 to execute the "Acknowledgment and Agreement to Be Bound" attached hereto
18 as Exhibit A.

19 10. Challenging Designations. The acceptance by a Party of Protected
20 Material shall not constitute an admission or concession, or permit any inference
21 that the documents so designated are, in fact, Confidential Information. The
22 Party may seek to remove from the scope of this Protective Order anything
23 designated as Confidential Information. The Party seeking such removal shall do
24 so in good faith and give written notice thereof to the other Party, identifying the
25 specific material challenged and explaining the basis for the challenge. The
26 designating party shall have ten (10) court days after the date of the written
27 challenge to explain the basis for designation. Thereafter, the Parties shall first
28 attempt to resolve such challenges in good faith and on an informal basis. If the

dispute cannot be informally resolved, the Party seeking removal of the designation may seek appropriate relief from the Court by filing and serving a motion with the Court seeking an order directing that the information no longer be treated as Confidential or Protected Material. The Party seeking removal shall have the burden of establishing grounds for removal of confidential treatment and that the information and/or documents involved have been improperly designated Confidential Information. Absent an agreement extending the schedule, any such motion must be filed and served within twenty (20) court days after the expiration of the ten (10) court day notice period set forth above. **Any agreements to extend the schedule must be submitted as a joint motion and approved by the Court. Civ. L.R. 7.2.a. Any motions to ask for judicial intervention to determine challenges to designations must also comply with the undersigned's chambers 45-day rule regarding resolution of discovery disputes. See Chmb. Rule VI.C & VII.** The Confidential Information shall continue to be treated as such during this process. If the Party seeking the removal of designation does not seek relief from the Court within the twenty (20) court days set forth above **and within the 45-day period to seek judicial intervention**, the challenged information shall remain Protected Material, unless the Court shall rule otherwise.

11. No modification, addition, or other change of this Protective Order shall be effective unless it has been set out in writing and signed by counsel of record for all Parties who have signed this Stipulation, or has been reduced to an order of the Court.

12. By agreeing to the procedures set forth in this Protective Order, none of the Parties agrees to produce any specific document or waives or prejudices any objection that Party may have to the production of any document. Nothing contained herein shall waive Parties' right to withhold documents from production to the extent permitted by law. In addition, the fact that a Party has

1 entered into this Protective Order is not, and shall not be argued or deemed to
 2 constitute a waiver of any objections they may have to the production of
 3 documents (including any objections based upon the attorney-client and/or
 4 attorney work-product privileges). This Protective Order does not prejudice the
 5 right of any Party to apply to the Court for an order compelling production of
 6 documents or to apply to the Court for:

- 7 a. a further protective order relating to any discovery in this action; or,
- 8 b. an order declaring that a document or information designated as
 9 Confidential is not Protected Material and should not be subject to this Protective
 10 Order, and likewise does not prejudice the right of any Party to object to any such
 11 application or motion.

12 13. Should Protected Material (or other contents or the information
 13 contained therein) covered by this Protective Order be disclosed in discovery
 14 motions and/or the exhibits to discovery motions, such documents, exhibits and
 15 transcripts shall be filed in sealed envelopes (or other sealed containers) marked
 16 with the title of this Action, the title of the document being filed, and a statement
 17 substantially in the following form:

18 **“CONFIDENTIAL**

19 Pursuant to the Protective Order dated _____, this envelope
 20 containing the above-titled documents filed by [the name of the party] is not to be
 21 opened nor the contents thereof displayed or revealed, except to the Court or
 22 counsel in this action.”

23 Access to these sealed envelopes or containers may be obtained by
 24 any of the Parties’ counsel for any necessary or appropriate uses in this action.
 25 Counsel for the Parties shall warn other counsel whenever they intend to quote
 26 from or otherwise disclose Protected Material in open court proceedings relating
 27 to discovery motions. Such warnings shall be given at or before the hearing (but
 28 need not be given prior to the start of oral argument) such that there is sufficient

1 time and opportunity for Defendant to object to the disclosure, to ask that the
2 courtroom be cleared of spectators and/or that the hearing be conducted in
3 chambers.

4 14. **Filing Under Seal. Nothing shall be filed under seal, and the**
5 **Court shall not be required to take any action, without separate prior order**
6 **by the Judge before whom the hearing or proceeding will take place, after**
7 **application by the affected party with appropriate notice to opposing**
8 **counsel. The parties shall follow and abide by applicable law, including Civ.**
9 **L.R. 79.2, ECF Administrative Policies and Procedures, Section II.j, and the**
10 **chambers' rules, with respect to filing documents under seal. Chmb. Rule**
11 **VII.A.**

12 15. This Protective Order shall not prevent any Party from applying to
13 the Court for relief therefrom, or from applying to the Court for further or
14 additional protective orders.

15 16. Nothing in this Protective Order, nor the production of anything by
16 any Party in this action, shall be deemed a waiver of any privilege with respect
17 thereto in any other action or proceedings, or a waiver of any privilege applicable
18 to any information other than the specific information so produced in this action,
19 or of the right of any party to this action to oppose production of any information.
20 In the event of any inadvertent disclosure of any Protected Material, all Parties
21 reserve all rights that they may have as a matter of law with respect to such
22 inadvertent disclosure.

23 17. Within sixty (60) days following the termination of this action,
24 including any and all appeals from a judgment, the Parties may request return of
25 or the shredding of all Protected Material it produced in this action. If such a
26 request is made in writing, the party to whom the request is made shall return or
27 shred, within ten (10) days, such Protected Material, including all copies thereof.
28

1 The Party returning or shredding the Protected Material shall bear the costs of
2 returning or shredding.

3 **18. Modifications. The Court may modify the protective order in**
4 **the interests of justice or for public policy reasons. Chmb. Rule VII.B.**

5 IT IS SO STIPULATED.

6 HYDE & SWIGART

7
8 Dated: October 28, 2016

By: /s/ Jessica R.K. Dorman
Jessica R.K. Dorman, Esq.
Attorneys for Plaintiffs

11 WRIGHT, FINLAY & ZAK, LLP

12
13 Dated: October 28, 2016

By: /s/ Patricia L. Penny
Robin P. Wright, Esq.
Patricia L. Penny, Esq.
Attorneys for Defendant,
MANUFACTURERS AND TRADERS
TRUST COMPANY aka M&T BANK

18 GORDON & REES, LLP

19 Dated: October 28, 2016

By: /s/ Kimberly D. Howatt
Kimberly D. Howatt, Esq.
Attorneys for Defendant, SAFEGUARD
PROPERTIES, LLC

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____, [print or type full name],
of _____ [print or type full address], declare under penalty of perjury that
I have read in its entirety and understand the Stipulated Protective Order that was
issued by the United States District Court – Southern District of California on
November 1, 2016 in the case of *Victoria A. Amelina et al. v. Manufacturers and
Traders Trust Company aka M&T Bank et al.* Case No. 3:14-CV-001906 WQH-
NLS. I agree to comply with and to be bound by all the terms of this Stipulated
Protective Order. I solemnly promise that I will not disclose in any manner any
information or item that is subject to this Stipulated Protective Order to any
person or entity except in strict compliance with the provisions of this Order.

ORDER

The terms of the above Stipulation are hereby ordered.

IT IS SO ORDERED.

Dated: November 1, 2016

A handwritten signature in black ink, reading "Rita L. Stormes", written over a horizontal line.

Hon. Nita L. Stormes

United States Magistrate Judge